(2)

No. 04-743

Supreme Court, U.S.
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In The
Supreme Court of the United States

UNA MAE DAVIS,

Petitioner,

v.

CLEVELAND HAMMONDS, JR., SUPERINTENDENT, ST. LOUIS PUBLIC SCHOOL DISTRICT,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Respondent objects to Petitioner's Questions Presented and offers the following as the correct issues to be considered on the Petition for Writ of Certiorari:

1. Whether the United States Court of Appeals for the Eighth Circuit has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power pursuant to Sup.Ct.R. 10 and 28 U.S.C. § 2101 (1988).

2. Whether the United States Court of Appeals for the Eighth Circuit entered a decision in conflict with the decision of another United States court of appeals on the same important matter as to call for an exercise of this Court's supervisory power pursuant to Sup.Ct.R. 10 and 28 U.S.C. § 2101 (1988).

RULE 14.1 STATEMENT

Petitioner is:

Una Mae Davis, an individual.

Respondent is:

Cleveland Hammonds, Jr., in his official capacity as Superintendent of the St. Louis Public School District.

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Cleveland Hammonds, Jr., former Superintendent of the St. Louis Public School District, respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Eighth Circuit (Case No. 03-3744). The opinion is unpublished.

The Petition should be denied because it fails to satisfy any of the Court's criteria for a grant of certiorari. More specifically, the Petition should be denied because (i) the Eighth Circuit Court of Appeals neither departed from the accepted and usual course of judicial proceedings, nor sanctioned such a departure by the United States District Court for the Eastern District of Missouri as to call for an exercise of the Court's supervisory power, and (ii) Petitioner failed to identify a genuine conflict with prior decisions of this Court or any other circuit. The Petition should further be denied pursuant to Sup.Ct.R. 15(2) on the grounds that the Petition contains material misrepresentations and omissions of fact.

JURISDICTIONAL STATEMENT

Davis I involved claims of race, gender and age discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e (1991). The district court accepted Davis' age discrimination claim as arising under the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), 29 U.S.C. § 621 (1996), even though Davis purported to state all three claims as arising under Title VII of the Civil Rights Act of 1964. Jurisdiction of the

district court on the federal question claims was invoked pursuant to 28 U.S.C. § 1331 (1980).

Davis II involved claims of race, age and gender discrimination, in violation of Section 213.055 of the Missouri Revised Statutes and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e (1991). Jurisdiction of the district court on the federal question claims was invoked pursuant to 28 U.S.C. § 1331 (1980). The district court had supplemental jurisdiction of Davis' state law discrimination claims under 28 U.S.C. § 1367 (1990) because the state law claims formed part of the same case or controversy as the federal claims.

The United States Court of Appeals for the Eighth Circuit consolidated *Davis I* and *Davis II* under Case No. 03-3744.

STATEMENT OF THE CASE

The Eighth Circuit Court of Appeals in a per curium Order, dated June 24, 2004, affirmed Chief Judge Carol E. Jackson's granting of summary judgment in *Davis I* and her dismissal of *Davis II*. The Eighth Circuit Court of Appeals properly applied applicable legal principles to the record below and its decision in these consolidated discrimination cases is based upon fundamental and universally accepted principles of law, and does not involve a conflict among circuits, does not involve a question of national importance, and does not require the Court's review.

A. Davis' Prior Employment and Applications for Re-Employment

Hammonds was at all relevant times the Superintendent of the St. Louis Public Schools. Davis is an African-American female who is over the age of forty. Davis was employed by the Board of Education of the City of St. Louis as a certified teacher from 1985 to 1993. In 1993, Davis voluntarily resigned. From 1995 to 1998, Davis taught in Texas.

Davis submitted applications for employment with the Board of Education in February 1999, April 2000, and April 2001. Pursuant to Board of Education policy, each employment application for a teaching position is kept on file for one year.

In 1999, Davis was interviewed by various principals at a St. Louis Public School job fair. During the job fair, multiple school principals advised Gloria King, Director of Teacher Services, that Davis was acting in a confrontational manner at the job fair and that she was interrupting other job interviews during the job fair. Davis also failed to provide reference letters from where she had taught for three years in Texas. The lack of employment references from Davis' previous employer, coupled with her confrontational attitude, caused King to question the strength of Davis' applications. In 2000, Davis was arrested by the St. Louis City Police in connection with a protest on U.S. Interstate Highway 70. Davis falsely stated on her April, 2001 application that she had never been arrested.

As a result of the aforementioned issues, King made a legitimate and non-discriminatory determination that

Davis' applications for employment were not the strongest. Accordingly, Hammonds did not rehire Davis.

On August 24, 2001, Joyce Roberts, Principal of Laclede Elementary School, interviewed Davis for a third grade teaching position. Roberts selected Davis for the position and offered her a job without confirming teaching vacancies with the Board of Education's Human Resources Division. Davis reported for work on August 27, 2001. After a brief orientation, Roberts directed Davis to report to Human Resources to complete paperwork for her hiring. The Director of Teacher Services advised Roberts that she did not have a teaching vacancy to offer Davis because of low enrollment at Laclede School. Accordingly, on August 27, 2001, King informed Davis that she would not be assigned to Laclede School or any other school. Hammonds did not hire any other teacher to fill the position originally offered to Davis for the 2001-2002 academic school year.

B. Undisputed Material Facts As To Hammonds' Non-Discriminatory Hiring Practices

Between February 1999 and February 2002, the Board of Education hired teachers who had not previously worked as teachers in the St. Louis Public Schools and rehired numerous teachers who had previously taught in the St. Louis Public Schools.

Between February 1999 and February 2000, the Board of Education hired thirty-four teachers who had previously worked as teachers in the St. Louis Public Schools. Thirty-one of the thirty-four teachers who were rehired were over the age of 40; and thirty of them were African-American. Between April 2000 and April 2001, the Board of Education hired seventy-one teachers who had

previously worked as teachers in the St. Louis Public Schools, of which sixty-seven of them were over the age of 40 and sixty were African-American. Between April 2001 and April 2002, the Board of Education hired ninety-nine teachers who had previously worked as teachers in the St. Louis Public Schools, of which ninety-seven of them were over the age of 40 and eighty-one of them were African-American.

Davis points to just one individual as her evidence of pretext. Davis claims that the Board of Education's hiring of Tracy Reynolds is evidence of race and age discrimination. Reynolds was hired as an elementary school teacher at Jefferson Elementary. Davis does not dispute that she never applied for the teaching position at Jefferson that was offered to Reynolds. Davis offered no evidence of Reynolds' educational background, qualifications to teach, or teaching certifications.

C. Proceedings Below In *Davis I*

On August 30, 2001, Davis filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") alleging claims of age and race discrimination. On or about March 27, 2002, the EEOC issued its Notice of Right to Sue on Davis' age and race discrimination claims.

On June 21, 2001, Davis filed a Complaint in the United States District Court for the Eastern District of Missouri alleging race, age and gender discrimination in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e (1991) ("*Davis I*"). On July 25, 2002, Hammonds filed his first Motion to Dismiss and Alternative Motion for Summary Judgment seeking, in

part, dismissal of Davis' gender discrimination claim on the grounds that Davis failed to exhaust her administrative remedies by failing to file a charge of discrimination with the EEOC alleging gender discrimination. On August 15, 2002, Chief Judge Carol E. Jackson dismissed Davis' gender discrimination claim.

On August 22, 2002, Plaintiff filed an EEOC Questionnaire with the EEOC, which Davis or the EEOC deemed to constitute a charge of discrimination (the "Second Charge"). In the Second Charge, Davis claimed she was subjected to age and sex discrimination. On September 18, 2002, the EEOC issued its Notice of Right to Sue on Davis' Second Charge.

On September 30, 2002, Davis filed an Amended Complaint alleging age and gender discrimination. Davis' Amended Complaint did not set forth a claim of race discrimination. On October 8, 2004, Hammonds filed a Motion to Dismiss Davis' Amended Complaint and Alternative Motion for Summary Judgment as to Davis' gender discrimination claim on the grounds that the Second Charge was not filed within the prescribed 300 days of the alleged discriminatory conduct. On October 23, 2002, Judge Jackson dismissed Davis' gender discrimination claim in the Amended Complaint for failure to state a claim upon which relief may be granted.

On June 30, 2003, Hammonds filed a Motion for Summary Judgment as to Davis' remaining age discrimination claim. On October 8, 2003, Judge Jackson granted Hammonds' Motion for Summary Judgment finding that Hammonds had articulated legitimate non-discriminatory reasons to not re-hire Davis and that Davis failed to present any evidence demonstrating pretext.

D. Proceedings Below In *Davis II*

As stated above, on August 22, 2002, Davis filed her Second Charge claiming that she was subjected to age and sex discrimination. On February 21, 2003, the Missouri Commission on Human Rights ("MCHR") issued Davis a Right to Sue letter bearing Charge No. FE-08/02-39673.

On May 22, 2003, Davis filed a Complaint in the Circuit Court of the Twenty-Second Judicial Circuit, City of St. Louis, Missouri, alleging claims of race, age, and sex discrimination, in violation of Mo.Rev.Stat. § 213.055 (2000) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e (1991) ("*Davis II*"). In *Davis II*, Davis alleged that the Board of Education's personnel office unlawfully reversed a hiring decision regarding Davis on August 27, 2001.

On June 12, 2003, Hammonds filed his Notice of Removal to the District Court. On July 14, 2003, Davis filed a Motion to Remand and Objection to Defendant's Notice of Removal. On June 27, 2003, Hammonds filed a Motion to Dismiss. On October 8, 2003, Judge Jackson denied Davis' Motion to Remand finding that the District Court had subject matter jurisdiction over Davis' federal claims under federal question jurisdiction pursuant to 28 U.S.C. § 1331 (1980) and supplemental jurisdiction over her state law discrimination claims pursuant to 28 U.S.C. § 1367 (1990).

In addition, because Davis failed to file the Second Charge with the MCHR within the 180 day period[1] and failed to file the Second Charge with the EEOC within the

[1] Mo.Rev.Stat. § 213.075 (2000).

300 day period,[2] which began August 27, 2001, Judge Jackson dismissed all of Davis' claims in *Davis II* for failure to state a claim upon which relief may be granted.

E. Proceedings Before the United States Court of Appeals for the Eighth Circuit

On November 17, 2003, Davis appealed the District Court's decision in *Davis I* to the United States Court of Appeals for the Eighth Circuit (Court Case No. 03-3744). On November 25, 2003, Davis appealed the District Court's decision in *Davis II* to the United States Court of Appeals for the Eighth Circuit (Court Case No. 03-3821). The United States Court of Appeals for the Eighth Circuit consolidated *Davis I* and *Davis II* under Court Case No. 03-3744.

The Eighth Circuit Court of Appeals in a per curium Order dated June 24, 2004, affirmed Chief Judge Carol E. Jackson's granting of summary judgment in *Davis I* and her dismissal of *Davis II*. The Eighth Circuit held: (1) Davis failed to create any trial worthy issues on her race and age discrimination claims; (2) Davis' gender charge of discrimination was filed untimely with the Equal Employment Opportunity Commission; (3) Davis did not produce any evidence showing that the legitimate, non-discriminatory reasons proffered by Hammonds for not rehiring her were a pretext for discrimination; and (4) Davis failed to produce any evidence that she was treated in a disparate manner from similarly situated employees.

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[2] 42 U.S.C. § 2000e-5(e) (1991); 29 U.S.C. § 626(d)(2) (1991)

REASONS FOR DENYING THE PETITION

I. THE PETITION SHOULD BE DENIED BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT NEITHER DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, NOR SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

A. In *Davis I*, The District Court Properly Dismissed Davis' Sex Discrimination Claim

In *Davis I*, Judge Jackson properly dismissed Davis' claim for sex discrimination under Title VII, both as asserted in her original Complaint and in her Amended Complaint because Davis failed to exhaust her administrative remedies.

The evidence unequivocally establishes that Davis did not make any claims of sex discrimination in her first charge of discrimination that she filed with the EEOC on August 30, 2001. Specifically, on the charge form she filed, Davis checked the boxes indicating claims of "race" and "age" discrimination, but did not check the box for "gender" or "sex" discrimination. Moreover, Davis made specific allegations that Hammonds denied her employment due to her race and age, but did not include any allegations that Hammonds acted based on her gender or sex. Lastly, the record below is devoid of any evidence that when the EEOC investigated Davis' race and age claims that it investigated Hammonds' employment practices regarding questions of gender or sex discrimination.

A plaintiff must exhaust her administrative remedies by filing charges with the appropriate administrative agency before filing an action under Title VII. *Williams v. Little Rock Mun. Water Works*, 21 F.3d 218, 222 (8th Cir. 1994); *Woelbling v. R.C. Wilson Co.*, 966 F. Supp. 858, 861 (E.D. Mo. 1997). A plaintiff will be deemed to have exhausted his or her administrative remedies as to allegations contained in a judicial complaint that are like or reasonably related to the substance of the charges timely brought before the EEOC. *Williams*, 21 F.3d at 222. A plaintiff may not bring a civil action that encompasses allegations outside the scope of the EEOC charge because that would undermine the role of the EEOC in investigating the claims and would deprive the charged party of sufficient notice of the claims against it. *Wallin v. Minnesota Dep't of Corr.*, 153 F.3d 681, 688 (8th Cir. 1998), *cert. denied*, 526 U.S. 1004 (1999); *Cobb v. Stringer*, 850 F.2d 356, 359 (8th Cir. 1988).

It is well established that individualized discrimination claims based on race or age do not obviously encompass an individualized claim based on sex so as to provide proper and sufficient notice that Davis was, in fact, asserting all three claims. *Sloop v. Mem'l Mission Hosp. Inc.*, 198 F.3d 147, 149 (4th Cir. 1999); *Davis v. Sodexho*, 157 F.3d 460, 464 (6th Cir. 1998); *Ajayi v. Aramark Bus. Services, Inc.*, 336 F.3d 520, 527 (7th Cir. 2003); *Duncan v. Delta Consol. Indus., Inc.*, 371 F.3d 1020, 1026 (8th Cir. 2004); *Williams*, 21 F.3d at 223; *Shikles v. Maytag Corp.*, 82 FEP Cases 1697 (W.D. Mo. 2000). Accordingly, pursuant to the well-established precedents, Judge Jackson properly dismissed Davis' sex discrimination claim as asserted in her original Complaint.

B. In *Davis I*, The District Court Properly Granted Summary Judgment for Hammonds on Davis' Age and Race Claims

In her original Complaint, Davis asserted claims of age, race and sex discrimination under Title VII based on Hammonds' alleged hiring practices. As set forth above, Judge Jackson properly dismissed the sex discrimination claim due to Davis' failure to exhaust her administrative remedies.

Judge Jackson subsequently granted summary judgment for Hammonds on Davis' age and race claims by finding that Hammonds articulated a legitimate non-discriminatory reason to not rehire Davis. Judge Jackson and the Eighth Circuit Court of Appeals further found that Davis failed to carry her burden to show that Hammonds' stated reasons were merely a pretext for intentional age or race discrimination. In fact, both Judge Jackson and the Eighth Circuit Court of Appeals found that Davis failed to adduce any evidence of pretext insofar as she failed to produce any admissible evidence that she was treated disparately than similarly situated individuals.[3] Instead, the courts below accepted data produced by Hammonds identifying all teachers rehired during the time Davis' applications were pending, which conclusively establishes that a substantial number of the teachers rehired during each of these three one-year periods were African-American and over the age of 40.

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[3] Davis admits that she has no knowledge of the qualifications, educational backgrounds, age or experience of the two employees to whom she seeks to be compared. Because of Davis' admitted ignorance, the courts below properly found that she failed to produce admissible evidence that the two individuals were similarly situated.

In summary, the Petition should be denied because the Eighth Circuit Court of Appeals neither departed from the accepted and usual course of judicial proceedings, nor sanctioned such a departure by Judge Jackson, as to call for an exercise of this Court's supervisory power.

C. In *Davis II*, the District Court Properly Dismissed Davis' Age and Sex Claims

The district court and the Eighth Circuit Court of Appeals properly held that the Second Charge that formed the basis of Davis' discrimination claims in *Davis II* was untimely filed with the EEOC and MCHR. The undisputed material facts establish that on August 27, 2001, Davis was informed that she was not being hired as a teacher for the 2001-2002 academic school year. Davis did not file her Second Charge until August 22, 2002 – 370 days after the date she was informed of the alleged discriminatory act.

Under the Missouri Human Rights Act, any person alleging to be subjected to an unlawful discriminatory practice must file a complaint with the Missouri Commission on Human Rights within 180 days of the alleged discriminatory act. Mo.Rev.Stat. § 213.075 (2000); *Gipson v. KAS Snacktime Co.*, 83 F.3d 225, 228 (8th Cir. 1996). The statute of limitations is strictly construed. *Swartzbaugh v. State Farm Ins. Co.*, 924 F. Supp. 932, 934 (E.D. Mo. 1995). Under Title VII, a plaintiff must exhaust her administrative remedies in a dual filing state by filing charges with the appropriate administrative agency within 300 days of the alleged discriminatory conduct. 42 U.S.C. § 2000e-5(e) (1991); *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002); *Delaware State Coll. v. Ricks*, 449 U.S. 250 (1980); *Williams*, 21 F.3d at 222.

To revive her claims in *Davis II*, Davis cites an outdated and partially overruled Fifth Circuit case, *Reed v. Economic Opportunity Atlanta, Inc.*, 516 F.2d 924 (5th Cir. 1975), in support of her position for the adoption of a "discovery" rule.[4] Under Davis' "discovery" rule theory, the accrual date for the 180 and 300-day time limitation periods is the date the discriminatory "effects" of the adverse action became known. (Pet. at 10). Davis' "discovery" rule theory has been rejected by the Court.

In *Delaware State College v. Ricks*, 449 U.S. 250 (1980), the Court pronounced that the Title VII limitations period commences at the time the decision is made and communicated to the plaintiff, *even where the effects of the decision do not occur until some future date or are subject to change. Ricks*, 449 U.S. at 259-61 (emphasis added).

In *Morgan*, the Court elaborated on this point and stated that a discrete retaliatory or discriminatory act "occurs" on the day that it "happens" and, therefore, a party must file a charge within either 180 or 300 days of the date of the act or lose the ability to recover for it. *Morgan*, 536 U.S. at 512-514. Davis' own argument supports Hammonds' position insofar as she cites *Nance v. Maxwell Federal Credit Union*, 186 F.3d 1338, 1341 (11th Cir. 1999), for the proposition that limitation periods commence on the date of the discrete discriminatory act. (Pet. at 10).

In summary, Davis' "discovery" rule argument is in conflict with this Court's prior decisions in *Ricks* and *Morgan*. Judge Jackson's and the Eighth Circuit Court of

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[4] Davis further argues for equitably tolling the time limitations. See *infra* Section III.

Appeals' decisions in *Davis II* were legally correct in holding that Davis' Second Charge was untimely filed with the EEOC and, therefore, Davis failed to exhaust her administrative remedies. Therefore, the Eighth Circuit Court of Appeals neither departed from the accepted and usual course of judicial proceedings, nor sanctioned such a departure by Judge Jackson, as to call for an exercise of this Court's supervisory power.

II. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DID NOT ENTER A DECISION IN CONFLICT WITH A DECISION OF ANOTHER UNITED STATES COURT OF APPEALS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER

The Petition fails to identify an irreconcilable and intolerable conflict with prior decisions of the Court or any other circuit as to call for an exercise of the Court's supervisory power. Sup.Ct.R. 10 and 28 U.S.C. § 2101 (1988). To the contrary, the Petition does not set forth a single argument that the decision of the Eighth Circuit Court of Appeals is in conflict with decisions of the Court or any other circuit.

Furthermore, as set forth above, the decisions of Judge Jackson and Eighth Circuit Court of Appeals were based upon fundamental and universally accepted principles of law that did not involve a conflict among circuits or prior decisions of the Court. Because the decision of the Eighth Circuit Court of Appeals is legally correct and there is no mature conflict in the courts of appeals, the Court's review is not warranted. *Layne & Bowler Corp. v.*

Western Well Works, 261 U.S. 387, 392-93 (1923); *Keller v. Adams-Cambell Co.*, 264 U.S. 314, 320 (1924).

In summary, the Petition For Writ of Certiorari should be denied on the grounds that the Eighth Circuit Court of Appeals' decision is not in conflict with a decision of the Court or any other circuit as to call for an exercise of this Court's supervisory power.

III. THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE IT CONTAINS MATERIAL MISREPRESENTATIONS AND OMISSIONS OF FACT

In accordance with his obligations under Sup.Ct.R. 15(2), Hammonds advises the Court that the Petition contains material misrepresentations and omissions of fact.

The Petition fails to inform the Court that Davis' equitable tolling argument was not properly preserved for appeal. The record below establishes that Davis' argument to toll the 180-day statutory time limitations for filing the Second Charge was first presented to the Eighth Circuit Court of Appeals. Federal appellate courts are not expected to pass on issues not decided by the district court. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 29 (1983); *Singleton v. Wulff*, 428 U.S. 106, 120 (1976); and *Kapp v. Naturelle, Inc.*, 611 F.2d 703, 709 (8th Cir. 1979). Accordingly, the Eighth Circuit Court of Appeals did not commit prejudicial error by not addressing Davis' equitable tolling argument.

In addition, the Petition sets forth false and misleading information relating to Davis' Amended Complaint in *Davis I*. The Petition states that Judge Jackson committed prejudicial error by reading her Amended Complaint in *Davis I* as not containing a race discrimination claim. (Pet. at 5). Davis' argument is factually and legally erroneous.

The Petition states that on September 30, 2002, Davis "unambiguously" informed the District Court that her Amended Complaint in *Davis I* was to add "sex and age" claims to the original complaint. (Pet. at 5).[5] Yet, it is undisputed that there is no record in the District Court file that Davis ever filed a Motion for Leave to file the Amended Complaint in September of 2002, much less an order granting such a motion.[6] Instead, the Amended Complaint in *Davis I* only sets forth claims of age and gender discrimination not a race discrimination claim. Lastly, the Petition fails to inform the Court that, despite the legal abandonment of Davis' race claim, Judge Jackson "out of an abundance of caution" fully addressed the merits of Davis' race claim in the context of Hammonds' Motion for Summary Judgment.

The Petition further contains false and misleading information about Davis' Opposition to Respondent's Motion to Dismiss and Alternative Motion for Summary Judgment in *Davis I*. (Pet. at 6). Davis argues that Judge Jackson committed prejudicial error by granting Hammonds' Motion to Dismiss and Alternative Motion for Summary

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[5] Davis' original Complaint, filed on June 21, 2001, alleged race, age and sex discrimination

[6] The only Motion for Leave to Amend Complaint was filed by Davis on June 21, 2002, when she filed her original form Complaint and original type-written Complaint.

Judgment prior to reviewing her Opposition to Respondent's Motion to Dismiss and Alternative Motion for Summary Judgment. (Pet. at 8). Davis' argument, however, fails to inform the Court of the full procedural history of Judge Jackson's granting of Hammonds' Motion to Dismiss and Alternative Motion for Summary Judgment. Davis fails to state that she filed a Motion for Reconsideration seeking to set aside the judgment, which was taken under consideration by Judge Jackson. The Petition further fails to state that Judge Jackson issued a Memorandum and Order, dated November 7, 2002 (improperly omitted from Petitioner's Appendix), that fully addressed the arguments contained in Davis' Opposition to Respondent's Motion to Dismiss and Alternative Motion for Summary Judgment. Thus, the Petition fails to set forth an accurate accounting of the procedural history of Hammonds' Motion to Dismiss and Alternative Motion for Summary Judgment, which upon review conclusively establishes that Judge Jackson thoroughly reviewed all of Davis' arguments in opposition to said motion. Accordingly, Judge Jackson did not commit prejudicial error by granting Hammonds' Motion to Dismiss and Alternative Motion for Summary Judgment or in denying Davis' request to set aside the judgment.

In summary, Hammonds respectfully submits that the Petition should be denied pursuant to Sup.Ct.R. 15(2) because Petitioner has knowingly provided this Court with material misrepresentations and omissions of fact.

CONCLUSION

For the reasons stated herein, Davis' Petition for a Writ of Certiorari should be denied.

Respectfully submitted.

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